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BEFORE THE
CALIFORNIA PUBLIC UTILITIES COMMISSION

Order Instituting Rulemaking Regarding Revisions to the California Advanced Services Fund.	Rulemaking No. 20-08-021

REPLY COMMENTS OF CALIFORNIA INTERNET, L.P. (U-7326-C) DBA GEOLINKS ON THE ASSIGNED COMMISSIONER'S RULING INVITING COMMENTS ON POTENTIAL MODIFICATIONS TO INFRASTRUCTURE ACCOUNT

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California Internet, L.P. (U-7326-C) dba GeoLinks ("GeoLinks" or the "Company") respectfully submits these reply comments in response to certain comments filed regarding the Assigned Commissioner's Ruling Inviting Comments on Potential Modifications to Infrastructure Account ("Ruling") for the California Advanced Services Fund ("CASF"), released on June 7, 2022. These reply comments are timely filed pursuant to the extension granted by Administrative Law Judge Kao via email ruling on June 15, 2022.

I. INTRODUCTION

Since 2016, GeoLinks has worked to expand its service area to include unserved and underserved areas throughout California and beyond. GeoLinks was the largest construction grant winner for California K-12 schools and libraries in 2016 and 2017, providing highspeed broadband to rural school districts and surrounding communities throughout the state that previously had not had access to any high-speed broadband service. In addition, the Company was named an awardee in the Connect America Fund Phase II auction for several areas in California where, absent subsidy funding, "broadband expansion and ongoing service would not be economically feasible"[1] and as a provisional winner of Rural Digital Opportunity Funding. The Company currently has a pending CASF application before the Commission and hopes to leverage its expertise in connecting unserved areas of the state to apply for additional CASF funding opportunities.

[1] FCC Press Release, *Connect America Fund Auction to Expand Broadband to Over 700,000 Rural Homes and Business: Auction Allocates $1.488 Billion to Close the Digital Divide*, released August 28, 2018, at 1.

II. DISCUSSION

GeoLinks offers reply comments on certain of the questions posed in the Ruling on the Revised CASF Program Guidelines, as follows:

1. Are the proposed program rules in Attachment 1 a reasonable means to prioritize projects in unserved areas? What additional or alternative funding criteria should the Commission consider?

In the Ruling, the Commission seeks comment on whether Staff's proposed program rules are reasonable to prioritize projects in unserved areas. In its opening comments, GeoLinks explained that while GeoLinks understands the Commission's desire to prioritize areas with 10/1 Mbps or less, only ensuring a 40% match in areas where there are speeds of more than 10/1 Mbps but less than the goal of 25/3 Mbps available may risk leaving these areas underserved. There is a reason these areas have not received faster broadband speeds and only allowing for 40% reimbursement will not help the problem. Even assuming these areas will ultimately be eligible for 50% (because they have existing infrastructure allowing for the 10/1+ Mbps connections), that still may not be sufficient. Other parties agree.

In its opening comments, CCTA states that "it is unreasonable to afford only a 40% baseline funding to projects in areas where there is between 10/1 and 25/3 Mbps," and that "providing a baseline funding of less than half of project costs for these applications is not reasonable and unjustifiably undermines the Legislature's goal by reducing the likelihood that these unserved areas get service and all of the benefits that come with broadband access."[2] In addition, LCB/SVI comments that it "supports projects requesting funding for unserved areas at 100%" but also "supports all other projects other than unserved areas to receive 60% funding as a baseline."[3] In particular, LCB/SVI explains that it "strongly objects to having a new 40% baseline for projects in areas with speeds above 10 Mbps. download and 1 Mbps. Upload" and goes on to emphasize that "at this point in time, with the 'low hanging fruit' gone in terms of unserved and underserved areas in the State, establishing such a low baseline of 40% funding

[2] Opening Comments of the California Cable & Telecommunications Association, R.20-08-021, filed June 27, 2022 ("CCTA Comments"), at 5-6.

[3] Opening Comments of LCB Communications LLC and SOUTH VALLEY INTERNET INC, R.20-08-021, filed June 27, 2022, at 2.

would make it very challenging to craft a successful project, given applicants pay all operating and maintenance costs for often sparsely populated areas."[4]

Moreover, ATT comments that "the Commission should have the flexibility to make up to 100% of the project cost available for any [Infrastructure Grant Account]-funded project, depending on the needs of the individual project. This includes projects containing some locations that have speeds at or above 25/3 Mbps."[5] ATT also explains that "if a greater proportion of project funding is not available, it could result in relegating the Californians who live in the area to remain unserved by 100/20 Mbps or fiber-based service, because they are uneconomical or technically infeasible to connect. Absent robust support from the CASF, providers may be unable to extend broadband infrastructure to these areas, and the projects may not attract bidders."[6] For these reasons and those set forth in GeoLinks' opening comments, the Company urges the Commission to raise its baseline match from 40% to 60% to help ensure viable CASF applications for all unserved areas.

GeoLinks disagrees with the comments of the Small LECs that oppose the possibility of 100% grant funding stating that "grant recipients should be required to make at least some financial commitment, even if it is 5% of the overall costs."[7] While the Small LECs "skin in the game" argument might sound good to outside parties, it fails to account for the fact that even with 100% grant funding, a CASF awardee may be taking on costs associated with a CASF project that are not covered under the 100% funding. And that even requiring a 5% match may make an entire CASF project unviable.

The CASF program is an infrastructure reimbursement program. Specifically, as outlined in the Staff Proposal, Pub. Util. Code section 281(f)(10)(A-C) defines the costs the Commission may reimburse as follows:

- Costs directly related to the deployment of infrastructure;

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[4] *Id.*

[5] Opening Comments of AT& California, R.20-08-021, filed June 27, 2022 ("ATT Comments"), at 3.

[6] *Id.*

[7] Opening Comments of Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C), R.20-08-021, Filed June 27, 2022 ("Small LECs Comments"), at 3.

- Costs to lease access to property or for Internet backhaul services for a period not to exceed five years; and
- Costs incurred by an existing facility-based broadband provider to upgrade its existing facilities to provide for interconnection.[8]

This section specifically excludes additional cost types such as maintenance costs, marketing costs, legal costs, the cost of ongoing regulatory compliance, etc. Put plainly, even a project receiving 100% grant funding may have additional costs not covered by the grant funding that must be taken into account by any would-be CASF applicant. If 100% grant awards are not allowed, it will surely mean that some of the most difficult to reach areas of the state will remain unserved. For these reasons GeoLinks urges the Commission to continue to allow the possibility of 100% grant funding.

2. Is it reasonable to make an additional 10 percent of funding available to projects that offer California LifeLine and/or federal LifeLine for five years following project completion? Does this change to program rules confer a similar benefit to program participants as the current rules, which provide a 10 percent funding adder for projects that offer a $15 per month low-income plan?

GeoLinks believes that a 10% funding adder for projects that offer California Lifeline and/ or federal Lifeline will encourage greater participation in the CASF program and interest in serving low-income consumers than an adder for projects that offer a $15 per month low-income plan. Specifically, GeoLinks explained that a $15 plan could create issues under the Affordable Connectivity Program ("ACP") by restricting CASF awardees from being able to collect the full $30 subsidy available to make up for the revenue lost from an artificially reduced cost plan – meaning that CASF awardees may not be able to offer the ACP on the $15 plans.

GeoLinks disagrees with the comments of TURN and the PAO, which urge the Commission to require artificially reduced low-income plans. TURN, for example, seeks to have the CPUC require that CASF winners offer service at unrealistic prices to low-income consumers. Specifically, TURN "supports an additional 10 percent of funding available to projects that offer California LifeLine and federal Lifeline, or a low-income broadband plan, *so long as the subscriber co-pay for either does not exceed $15 per month*."[9] Similarly, the PAO asserts that "if the Commission requires all Infrastructure Account grantees to provide a low-

[8] Ruling Attachment 1, at A-22.

[9] Opening Comments of The Utility Reform Network, R.20-08-021, Filed June 27, 2022 ("TURN Comments"), at 10 (emphasis added).

income broadband plan, then customers eligible for California LifeLine and federal Lifeline would benefit from access to both the subsidy programs and affordable low-income broadband plans."[10]

As GeoLinks explained in its opening comments, the proposed rules already require CASF awardees to participate in the ACP program and gives incentive to participate in the California LifeLine/ Lifeline program. Therefore, a presumption of affordability for low-income participants is built in. As GeoLinks has expressed before to this Commission, the FCC has long recognized the importance of affordability when it comes to broadband access. The FCC's Urban Rate Survey sets forth reasonably comparability benchmarks for fixed voice and broadband services.[11] GeoLinks believes that if the Commission requires "a variety of affordable and/or low-income plans across programs" it should build off of the extensive work the FCC has already done and utilize the rural comparison rates already in place. Requiring a different standard could disincentivize providers from participating in the CASF program.

4. Are the Infrastructure Account definitions proposed in Attachment 1 reasonable? What modifications or additional definitions are needed and why?

In the Ruling, the Commission asks about certain proposed definitions and whether changes are needed. In its opening comments, GeoLinks urged for changes to two definitions including the proposed definition of "Unserved." In its comments, GeoLinks objected to the inclusion of the word "reliably" in the definition. Other commenters agree.

The NDC urges the Commission to remove "reliably" from the definition of unserved.[12] Further, CCTA urges the Commission strike the reference to "reliably" because "it strays from the plain language enacted by the Legislature."[13] Similar to GeoLinks, CCTA "generally agrees that reliable service is important" but goes on to explain that "the term here is ambiguous and misaligned with the statutory definition. Moreover, Frontier recommends that the Commission "revise footnote 12 to more objectively and narrowly define 'reliably' as used in the proposed

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[10] Opening Comments of the Public Advocates Office, R. 20-08-021, Filed June 27, 2022 ("PAO Comments"), at 7.

[11] *See* https://www.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources

[12] Opening Comments of the National Diversity Coalition, R. 20-08-021, Filed June 27, 2022 ("NDC Comments"), at 5.

[13] CCTA Comments, at 7-8.

definition of 'unserved'" because "the current footnote clarifying how the Commission would determine if an area is 'unserved' is overbroad and is subject to considerable subjective determinations."[14] For these reasons, GeoLinks continues to urge the Commission to remove "reliably" from the definition of "unserved."

In addition, GeoLinks agrees with CCTA that the Staff Proposal deviates from the precise statutory definition for "unserved" with the inclusion of "to the entire community."[15] CCTA explains that "the Staff Proposal does not define the phrase 'entire community' and thus introduces ambiguity and uncertainty for grant applicants and providers currently offering service in the project area. Also, the language is inconsistent with Section 281(b)(4), which mandates that Commission focus the IGA program on "serviceable locations" (not entire communities)."[16] GeoLinks supports CCTA's proposed revised definition of "unserved" as follows:

> An "unserved" area means an area for which no fixed facility-based broadband provider ~~reliably offers~~ offering at least one tier of broadband service at speeds of at least 25 Mbps ~~download and~~ downstream, 3 Mbps ~~upload to the entire community~~ upstream.[17]

6. Are the eligibility criteria, application requirements and challenge requirements regarding serviceable locations and minimum speeds, as proposed in Attachment 1, reasonable? What modifications or additions are needed and why?

GeoLinks agrees with AT&T that "the Proposed Decision should clarify that applicants for last-mile funding are not required to connect to the state middle mile network."[18] This is an important point of clarification to ensure that "need" and "supply" are not conflated. The statewide middle mile network has been proposed along established state highway routes. The issue is that not all unserved communities are located along established highway routes. Therefore, there will inevitably be instances where interconnection to the statewide middle mile network is either technically or financially infeasible for certain CASF projects. For this reason,

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[14] Opening Comments of Frontier California Inc. (U 1002 C), Citizens Telecommunications Company of California Inc. Dba Frontier Communications of California (U 1024 C), Frontier Communications of The Southwest Inc. (U 1026 C), R. 20-08-021, Filed June 27, 2022 ("Frontier Comments"), at 2.

[15] CCTA Comments, at 9.

[16] *Id*.

[17] *Id*.

[18] ATT Comments, at 4.

GeoLinks urges the Commission to make clear that connection to the statewide middle mile is not necessary for CASF funding.

8. Are the Infrastructure Account performance criteria proposed in Attachment 1 reasonable? What modifications or additions are needed and why?

In its comments regarding Infrastructure Account performance criteria, the PAO proposes that the Commission require CASF awardees to file a Tier 3 advice letter anytime they wish to adjust plans within a CASF award area. This proposed requirement is not only administratively burdensome for service providers but also imposes unnecessary burdens on Commission staff. CASF awardees must be able to respond to market demands. This may mean needing to adjust speed and price combinations, which could include prices being decreased for certain speed combinations or speeds being increased but at the same rate. CASF awardees should have a simple process by which they can adjust rates without having to go through the rigors of the Tier 3 advice letter process, which will only disincentivize awardees from adjusting rates that will benefit subscribers.

12. Is it reasonable to require applicants who propose to combine multiple broadband grant funds to itemize project costs and explain the incremental broadband investment that would not be met by the other federal or state funding commitments?

In its opening comments, GeoLinks explained that the Commission should unequivocally support the leveraging of other sources of federal and state funding to further its goals and any rules regarding how a CASF applicant may do so should be crafted carefully to ensure that they don't dissuade federal and state funding winners from applying for CASF funding. Specifically, GeoLinks asserted that the rules as proposed give the impression of inherent skepticism that any CASF applicant that has the benefit of other funding sources will somehow not use CASF funding properly or for its stated purpose. Similarly, the Small LECs state in their opening comments that "CASF applicants who seek to leverage both state and federal support should not be required to identify discrete benefits from the addition of the CASF support. Rather, applicants should be required to show that the project overall meets the CASF eligibility requirements and that the amount of anticipated federal support will not be sufficient to cover the overall cost of the project for which CASF contribution is sought."[19] The Small LECs go on to explain that "efforts to combine federal and state funds should be encouraged, not subjected to unnecessary CASF-specific cost itemization requirements."[20] GeoLinks agrees and urges the Commission to reject the proposal that CASF applicants who wish to leverage other funding sources itemize project costs and explain the incremental broadband investment that would not be met by the other federal or state funding commitments.

14. Are the Infrastructure Account program rules for project challenges as proposed in Attachment 1 reasonable? What modifications or additions are needed and why?

In its opening comments, GeoLinks explained that one proposed program rule for project challenges must be struck to ensure equitable and technology neutral administration of the program. Specifically GeoLinks opposes the proposed requirement that "Entities that provide fixed-wireless or any non-wired solution that are challenging fiber-based projects (including by not limited to fiber-to-the-premises or hybrid-fiber-coaxial) must include propagation maps (heat maps) that show verification of the ability to connect to all serviceable locations at equivalent bandwidth to that proposed by the applicant they are challenging and must agree to serve all locations for which they are challenging in perpetuity."[21] Several commenters agree with GeoLinks on this point.

CCTA, for example, explains that this rule runs "contrary to the purpose of Section 281, which focuses on extending broadband service to customers who are unserved at 25/3 Mbps, and instead make it unreasonably difficult to challenge applications that seek to waste finite IGA funds on overbuilding served areas.[22] Specifically, CCTA makes the following point:

- Equivalent bandwidth: This requirement puts challengers in the impossible position of guessing what bandwidth a grant applicant may ultimately provide. It also engenders unfair comparisons given that the existing provider's current speeds are being compared with the applicant's hypothetical future speeds, which are difficult to predict considering the scalability of broadband networks.

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[19] Small LECs Comments, at 7.

[20] *Id*.

[21] Ruling Attachment 1, at A-37.

[22] CCTA Comments, at 17.

> And finally this requirement violates Section 281(f)(1)'s directive that CASF grants be awarded on a "technology-neutral basis."[23]

Similarly, Frontier explains that "challengers that offer speed capabilities in the challenged area at 25/3 Mbps or above should not be required to attest to equivalency in bandwidth.[24]

In addition, Small LECs explain that "demonstrating an equivalency in bandwidth should not be necessary as long as the challenger provides capabilities in the area at 25/3 Mbps or above."[25] As Small LECS astutely point out, such a rule "would create a significant loophole in the CASF program that would encourage arbitrage proposals and divert funds away from areas that do not have sufficient infrastructure and desperately need it" and "the challenge process should not be structured to disfavor challengers just to approve more CASF projects…it should be sufficient to approve a "challenge" that the challenger demonstrates its network capabilities through speed testing, a verified attestation, and the production of one appropriately-redacted customer bill in the census block demonstrating that service is being offered at or above the statutory target of 25/3 Mbps."[26]

For the foregoing reasons and those stated in its opening comments, GeoLinks urges the Commission to keep the challenge process simple. If a service provider (of any technology type) that meets all other challenge criteria (including participation in the Commission's Broadband Data Collection process) can show that it offers service of at least 25/3 Mbps to serviceable locations within a CASF application area, then those locations should be excluded from the CASF application.

16. If the Commission were to increase the overall grant request cap for projects reviewed under Ministerial Review as proposed, is the current per-location cap for projects reviewed under Ministerial Review still reasonable? Why or why not?

In its opening comments, Frontier explains that an increase in the overall grant request cap should also have a "corresponding increase to the project costs per serviceable location."[27]

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[23] *Id* at 18.

[24] Frontier Comments, at 4.

[25] Small LECs Comments, at 9.

[26] *Id*., at 10.

[27] Frontier Comments, at 5.

As GeoLinks stated in its opening comments, it would support the removal of per-location caps so long as it was done on a technology neutral basis.

In the proposal, Staff proposes to retain the inequitable per-location cost thresholds of $9,300[28] per serviceable location cost for fiber projects and a $1,500 per-serviceable location cost for fixed-wireless projects. **More than a 6x difference**. As GeoLinks has explained before, on its face, this discrepancy is contrary to the Commission's stated goal of administering the CASF program on a "technology neutral" basis.[29]

GeoLinks again urges the Commission to set a flat cost per location threshold for its ministerial review process that would apply to all CASF applicants, **regardless of technology type**. Not only will this flat per household amount simplify the review process, but it will set all service providers on equal footing for ministerial review, ensuring maximum participation in the CASF program and promoting more efficient use of CASF funds. At a minimum, the Commission should raise the per serviceable location threshold for non-fiber applicants to more closely match that available to fiber applicants. Failure to do so will perpetuate unfair administration of the CASF program to the detriment of unserved Californians.

20. Are the Infrastructure Account program rules for execution and performance proposed in Attachment 1 reasonable? What modifications or additions are needed and why?

In its opening comments, GeoLinks urged the Commission to revise its proposed language regarding terminations. As written, the proposal gives both the Commission and the recipient the ability to terminate the CASF award at any time upon 10 days written notice. However, the proposal is silent as to whether the CASF awardee will be reimbursed for any costs incurred to undertake the previously approved CASF project if the Commission terminates the award mid-stream. Other commenters also see issues with this proposed rule.

Frontier explains that "the Commission should clarify that a draft resolution will issue when the Commission terminates an award" and that "the rules should specify the specific

[28] GeoLinks notes that there is a typo in the chart contained in Attachment 1 to the Ruling at A-39. GeoLinks presumes the intention was for the threshold number in the chart to be $9,300.

[29] *Interim Opinion Implementing California Advanced Services Fund*, Decision 07-12-054 (rel. December 20, 2007), at 8: "The CASF shall be administered on a technology neutral basis by the Commission." See also at 28: "CASF funding proposals will be reviewed based upon how well they meet the criteria for selection as set forth below, and, where applicable, compared with any competing claims to match the deployment offer under superior terms. *Such criteria should be evaluated on a competitively neutral basis*." (*Emphasis added*).

grounds on which a grant award may be terminated by the Commission" and "should also require that a draft resolution be issued in connection with any rescission."[30] In addition, the Small LECs explain that "the proposed process for rescinding grants implies that staff would have unilateral power to strip grantees of their support," which lacks due process.[31] The Small LECs go on to explain that "the grounds for ministerial recission should be clearly articulated, as they are in the existing rules embodied by Resolution T-17756 (permitting grant rescission for being "out of compliance" based on a specific "checklist."). In all other respects, a draft resolution should be required for grant cancellation."[32] GeoLinks agrees with these commenters and asserts that a draft resolution must be issued in the cases of award rescission. In addition, GeoLinks reiterates its position that the Commission should reinstate the possibility of partial completion of a project or consider the ability for CASF awardees to partially terminate their CASF projects.

III. CONCLUSION

For the foregoing reasons, and to ensure technology neutral, equitable, and efficient administration of the CASF program, GeoLinks urges the Commission to make changes to certain of the Revised CASF Program Guidelines proposed by Staff.

Respectfully submitted,

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[30] Frontier Comments, at 6.

[31] Small LECs Comments, at 2.

[32] *Id*.